

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES, *et al.*,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

No. 1:23-cv-00108-LMB-JFA

**NON-PARTY INDEX EXCHANGE INC.'S SUPPLEMENTAL OBJECTIONS AND
MEMORANDUM OF LAW IN SUPPORT OF ITS SUPPLEMENTAL OBJECTIONS TO
THE PUBLIC USE OF CONFIDENTIAL INFORMATION**

Pursuant to Local Rules 5(c) and 5(h), non-party Index Exchange Inc. (“Index”), through its undersigned counsel, respectfully submits its Supplemental Objections and this Memorandum of Law in Support of Index’s Supplemental Objections to the Public Use of Confidential Information at Trial (“Index’s Supplemental Objections”) in response to Plaintiffs’ Objections to Defendant’s Counter-Designations and Plaintiffs’ Submission Of Fairness Designations (ECF No. 1015, hereinafter “Plaintiffs’ Fairness Designations”) and pursuant to the Court’s July 18, 2024 Order providing that any party or non-party who objects to the public use of confidential testimony reflected in a party’s reply (“fairness”) designations must file a specific objection with a proposed acceptable redaction of the information (ECF No. 913).

On July 26, 2024, Index filed Objections to the Public Use of Confidential Information, together with a supporting memorandum of law (ECF No. 1004, hereinafter “Index Mem.”) and the declaration of Andrew Casale, Index’s CEO (ECF No. 1004-1, hereinafter the “Casale Declaration”), in which Index objected to the Parties’ public use of excerpts from the deposition testimony of Andrew Casale (“Casale Testimony”) that Index had previously designated as

“highly confidential” pursuant to the Modified Protective Order in this action (ECF No. 203).

Plaintiffs’ Fairness Designations include additional excerpts from the Casale Testimony. Index seeks to maintain the confidentiality – through narrow, targeted redaction – of only one of the seven excerpts from the Casale Testimony identified in Plaintiffs’ Fairness Designations. This excerpt is page 162, lines 6-14, which contains highly sensitive proprietary information regarding Index’s transactions that Index previously designated as highly confidential pursuant to the Modified Protective Order.¹

As explained at length in Index’s prior submission, the disclosure of specific facts and numbers regarding Index’s highly sensitive proprietary transactional data would cause significant, irreparable harm to Index and put it at a disadvantage against its competitors, including by equipping Index’s competitors to undercut or acquire Index. *See* Index Mem. at 23-25. Courts in this District routinely grant motions to seal similar highly sensitive proprietary information of third parties, including at the trial stage. *See id.* at 26-29 (citing cases). Index’s request is also consistent with Magistrate Judge Anderson’s rulings on prior motions to seal. *See id.* at 26 n.3; *see also* ECF No. 903. For all of the reasons set forth in Index’s previous submission, including the Casale Declaration, Index respectfully requests that the Court sustain Index’s Supplemental Objections and order the redaction of page 162, lines 6-14, of the Casale Testimony. A proposed order is attached.

¹ Although Index provided notice to the Parties on October 12, 2023 that it designated this portion of the transcript as Highly Confidential pursuant to the Modified Protective Order, Plaintiffs’ Fairness Designations incorrectly identify the confidentiality designation of this transcript excerpt as “public.”

Dated: July 31, 2024

Respectfully submitted,

/s/ Mary C. Zinsner

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